be conceded that Congress possesses a police power within the field of interstate commerce, the rights of the individual in this field may be sacrificed, provided the necessity therefor exists, and the means be reasonably adapted to the end sought.[18] And though it may be urged that the courts should look behind the apparent purpose of such an act to ascertain its practical effect, a principle of construction of occasional application in the voiding of state statutes,[19] yet the fact remains that the Supreme Court has never applied this test to federal statutes. Upon the whole, it seems that the welfare of the producer is no less important than that of the consumer, and that the Congressional power over interstate commerce may likewise be invoked for his protection. Hence, since there is no distinction between the two situations from legal standpoint, it seems that if a statute similar to the proposed Child Labor Law[20] be held unconstitutional, the decision must turn upon questions of fact as to the necessity for the legislation and the reasonableness of the means adopted to protect the public health.

LIABILITY OF PLEDGEE OF STOCK AS SHAREHOLDER.—The pledgee of a chattel does not take the legal title, but has special property in the thing pledged, the general property remaining in the pledgor.[1] The pledgee of a chose in action, however, generally acquires the legal title because without it he cannot be said to possess the right pledged.[2] It was once thought that stock and other incorporeal property could not be the subject of a pledge because when the legal title passes to the pledgee the transaction has the aspect of a mortgage rather than a pledge;[3] but the courts, in an effort to carry out the intentions of the parties, soon declared that although the legal title in the chose in action became vested in the pledgee, the "general property" remained in the pledgor.[4] When the interests of the corporation in which the stock was held and its creditors became involved, however, the courts refused to extend the doctrine.[5] Once the transfer had been recorded

[18]See Freund, Police Power, §§ 63, 150; 21 Harvard Law Rev. 609; 10 Columbia Law Rev. 752.

[19]Minnesota *v.* Barber (1890) 136 U. S. 313; *cf.* Yick Wo *v.* Hopkins (1886) 118 U. S. 356.

[20]A bill providing for the exclusion of products of child labor from interstate commerce was introduced in the House of Representatives on January 26, 1914. A similar bill formerly introduced by Senator Beveridge failed of passage. See Watson, Constitution, 532, n. 37.

[1]Thompson *v.* Dolliver (1882) 132 Mass. 103.

[2]See Wilson *v.* Little (1849) 2 N. Y. 443.

[3]See Rice *v.* Gilbert (1898) 173 Ill. 348, 351; Jones, Pledges (3rd ed.) § 151.

[4]Union Trust Co. *v.* Rigdon (1879) 93 Ill. 458; see Dungan *v.* Mutual etc. Co. (1873) 38 Md. 242.

[5]It would seem that the person having the "general property", the "primary and residuary title", might have been regarded as the stockholder, at least as far as liabilities are concerned; but when the corporation and its creditors were pressing their rights, the courts uniformly regarded the pledgor as having only an equitable interest, probably less than equitable ownership. See Matter of Empire City Bank (1858) 18 N. Y. 199, 226. And in most cases a pledgee, who was stockholder of record, was subject to every liability because he had the legal title.

on the books of the company, the pledgee was in many respects treated as the real owner because he was the legal owner, and it was denied that the pledgor was owner in any proper sense of the term.[6] In the best considered cases, however, even where the broadest language was used in imposing the liabilities of a stockholder upon the pledgee, there was a suggestion that the ultimate reason for his liability was estoppel.[7] The injustice of imposing these burdens upon the pledgee, when nothing in the nature of the transaction supports the assumption that he intended to assume them, eventually led many of the courts to relieve him unless he had very clearly estopped himself from denying his ownership as against the corporation or its creditors; and this is the view taken by the federal courts in applying the statutes imposing special liabilities on the stockholders of national banks.[8] If the pledgee appears on the books of the corporation to be holding in that capacity, he is not estopped to deny his ownership;[9] furthermore, even when he appears to be holding absolutely, the burden is on the party setting up the estoppel to show that the pledgee knowingly permitted himself to so appear, or that there was positively nothing on the books which could have charged an examiner of the books with notice.[10] Although he become owner of the stock by assignment, if he has not had the stock transferred on the books, he is not liable as a stockholder;[11] and conversely, if he ceases to be owner in fact, but remains apparent owner on the books, he is liable.[12] Moreover, the constitutionality of statutes relieving the pledgee of such liabilities does not seem to have been questioned, although the liability of a shareholder for an unpaid balance on stock rests primarily upon contract. According to the prevailing view, the fact that the pledgee appears on the books of the corporation as absolute owner, or has voted the stock, does not except him from the protection of the statutes,[13] and he can show by parol evidence that he holds the stock as collateral security.[14] It may be said, therefore, that although it is well settled that in the absence of statute the pledgee is subject to the liabilities of a stockholder when he

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[6]Adderly *v.* Storm (N. Y. 1844) 6 Hill 624; Holyoke Bank *v.* Burnham (Mass. 1853) 11 Cush. 183; Hale *v.* Walker (1871) 31 Ia. 344.

[7]National Bank *v.* Case (1878) 99 U. S. 628; Welles *v.* Larrabee (C. C. 1888) 36 Fed. 866; Wheelock *v.* Kost (1875) 77 Ill. 296; see note to Andrews *v.* National etc. Works (C. C. A. 1896) 36 L. R. A. 139.

[8]Tourtelot *v.* Stolteben (C. C. 1900) 101 Fed. 362.

[9]See Pauly *v.* State etc. Co. (1896) 165 U. S. 606, 622; note to Marshall Field Co. *v.* Evans etc. Co. (Minn. 1908) 19 L. R. A. [N. S.] 249; but see National etc. Bank *v.* McDonnell (1890) 92 Ala. 387.

[10]Baker *v.* Old National Bank (C. C. 1898) 86 Fed. 1006; see Tourtelot *v.* Stolteben, *supra.*

[11]Robinson *v.* Southern National Bank (1901) 180 U. S. 295; Henkle *v.* Salem Mfg. Co. (1883) 39 Oh. St. 547.

[12]Adderly *v.* Storm, *supra.*

[13]Union etc. Assn. *v.* Seligman (1887) 92 Mo. 635; see Burgess *v.* Seligman (1882) 107 U. S. 20, 28.

[14]McMahon *v.* Macy (1872) 51 N. Y. 155; Matthews *v.* Albert (1866) 24 Md. 527; see Burgess *v.* Seligman, *supra.* Under similar legislation in other jurisdictions, however, it is held that the pledgee is liable unless he appears to be such on the books of the corporation, thus giving further effect to the principle of estoppel. Hurlburt *v.* Arthur (1903) 140 Cal. 103; Adams *v.* Clark (1906) 36 Colo. 65.

appears to be such on the books of the company, the present tendency is to regard that liability as based upon estoppel, and to protect the pledgee whenever it can be done consistently with that principle. Furthermore, since his legal ownership is in fact only accidental to the whole transaction, the courts, effectuating the real intentions of the parties, will apply liberally a statute relieving him from these liabilities.

In the recent case of *VanTuyl* v. *Robin* (App. Div. 1st Dept. 1913) 145 N. Y. Supp. 121, it was held that a pledgee of bank stock, who is registered as a stockholder on the books of the corporation, is subject to the special liabilities imposed by a provision of the state constitution upon the stockholders of banking institutions. The court disregarded a provision of the Stock Corporation Law relieving pledgees from such liability,[15] and construed a provision of the Banking Law, defining "stockholder", which might have been interpreted to protect him, as excepting the pledgee from liability only when he did not appear to be a stockholder upon the books of the company. The court adopted the view taken in an early case where a similar provision in the Constitution of 1846 was held to impose this liability upon all stockholders of record.[16] It is to be regretted that the court felt constrained to take this position, for in view of the real relations of the parties, and the liberality with which such statutes are usually construed, especially in New York,[17] the decision is distinctly retrogressive.

LICENSE TAXATION OF FOREIGN CORPORATIONS.—The extent to which the Fourteenth Amendment limits the power of the States to impose privilege taxes upon foreign corporations engaged in local and interstate commerce is not yet clearly defined. It has been determined on the one hand that a corporation is not a citizen entitled to the privileges and immunities of citizens of the several States;[1] and on the other, that it is a person, whose property may not be taken without due process of law. But for a long time the Supreme Court held that since a corporation has no legal existence outside of the State that charters it, it is not a person in any other jurisdiction, and so not entitled to the equal protection of the laws in foreign States.[2] Hence, a corporation seeking to do a local business in a foreign State may be compelled to pay any tax or submit to any regulation however unrea-

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[15]This provision seems to have been made applicable by § 71 of the Banking Law. See opinion of the lower court in the principal case. (Sup. Ct. 1913) 80 Misc. 360, 367.

[16]Matter of Empire City Bank, *supra*.

[17]See 80 Misc. 360, 367, *supra*. "The stock book is presumptive evidence only of the title. It may be rebutted and the character of the ownership shown. It is always competent to show that an instrument absolute on its face was intended only as a security." Citing McMahon *v.* Macy, *supra*. According to this construction, it would seem that the pledgee would never be estopped to deny his apparent absolute ownership.

[1]Paul *v.* Virginia (1868) 8 Wall. 168; Blake *v.* McClung (1898) 172 U. S. 239, 259.

[2]Blake *v.* McClung, *supra*, p. 261; Pembina Mining Co. *v.* Pennsylvania (1888) 125 U. S. 181